

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

LORENZO GUARINO,  
Plaintiff

V.

R.W. GRANGER & SONS, INC.,  
Defendant

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CIVIL NO. 04-10246

JLT

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U.S. DISTRICT COURT  
DISTRICT OF MASS.

**ANSWER OF THE DEFENDANT,  
R.W. GRANGER & SONS, INC.,  
AND DEMAND FOR JURY TRIAL**

1. The Defendant can neither admit nor deny the allegations of Paragraph 1 of the Complaint because it is without knowledge or information sufficient to form a belief as to the truth of the said allegations.
2. The Defendant admits the allegations of Paragraph 2 of the Complaint.
3. The Defendant can neither admit nor deny the allegations of Paragraph 3 of the Complaint because it is without knowledge or information sufficient to form a belief as to the truth of the said allegations.
4. The Defendant can neither admit nor deny the allegations of Paragraph 4 of the Complaint because it is without knowledge or information sufficient to form a belief as to the truth of the said allegations.

COUNT I

5. The Defendant can neither admit nor deny the allegations of Paragraph 5 of the Complaint because [he/she/it] is without knowledge or information sufficient to form a belief as to the truth of the said allegations.
6. The Defendant admits the allegations of Paragraph 6 of the Complaint.
7. The allegation(s) contained within Paragraph 7 constitute a statement or conclusion of law and therefore are neither admitted nor denied but respectfully referred to the judgment of the Court.
8. The Defendant denies the allegations of Paragraph 8 of the Complaint.
9. The Defendant denies the allegations of Paragraph 9 of the Complaint.

10. The Defendant denies the allegations of Paragraph 10 of the Complaint.

WHEREFORE, the Defendant demands that the Complaint be dismissed and that judgment enter thereon for Defendant, together with costs.

THE DEFENDANT DEMANDS A TRIAL BY JURY.

### AFFIRMATIVE DEFENSES

#### First Affirmative Defense:

And further answering, the Defendant says that the injuries and damages alleged were caused in whole or in part by negligence of the Plaintiff to a degree greater than any alleged negligence of the Defendant.

#### Second Affirmative Defense:

And further answering, the Defendant says that the injuries and damages alleged were not caused by the act or acts of any person for whose conduct the Defendant was legally responsible.

#### Third Affirmative Defense:

And further answering, the Defendant says that the location of the Plaintiff's alleged fall was not an area within the care, custody or control of the Defendant, and the Plaintiff is thereby barred from recovery.

#### Fourth Affirmative Defense:

And further answering, the Defendant says that at the time of the alleged accident or incident, the Plaintiff was guilty of a violation of the law which contributed to cause the injuries and damages alleged.

#### Fifth Affirmative Defense:

And further answering, the Defendant says that the Complaint fails to state a claim against the Defendant upon which relief can be granted.

#### Sixth Affirmative Defense:

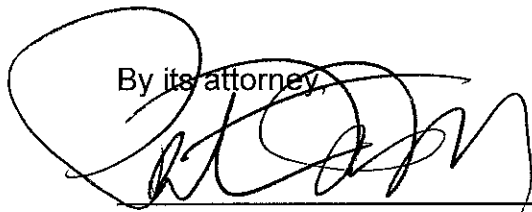
And further answering, the Defendant denies that it was negligent, careless or grossly negligent in any manner.

#### Seventh Affirmative Defense:

And further answering, the Defendant says that the Plaintiff failed to exercise due care at the time of the accident.

Eighth Affirmative Defense:


And further answering, the Defendant says that the Plaintiff contributed to the cause of the action and, therefore, the damages, if any, should be diminished in accordance with G.L. c. 231, §85, as amended.

By its attorney,  
  
Patrick M. McCormack  
B.B.O. No. 546194  
Law Offices of Jacqueline L. Allen  
262 Washington Street, Suite 601  
Boston, MA 02108  
617-878-4614

**CERTIFICATE OF SERVICE**

I, Patrick M. McCormack, attorney for the Defendant, R.W. Granger & Sons, Inc., in the above-entitled action, hereby certify that on the 30<sup>th</sup> day of March, 2004, I mailed a copy of the within Certificate of Service, postage prepaid, to:

Frank C. Corso, Esquire  
15 Court Square Suite 240  
Boston, MA 02108

  
Patrick M. McCormack  
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